

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE**

**WRIT PETITION No.16680 OF 1996**

**Between:**

G. Anil Kumar

... Petitioner

**AND**

The General Manager, Small Industries Development  
Bank of India, Bhubaneswar and two others.

... Respondents

**:: ORDER ::**

Counsel for the petitioner

: Sri Ch. Jagannadha Rao

Counsel for the respondents

: Ms. V. Uma Devi for  
Sri K. Srinivasa Murthy

**March 28, 2007**

In this petition, the petitioner has prayed for quashing order dated 8-3-1996 vide which General Manager, Small Industries Development Bank of India, Bhubaneswar terminated his service. He has further prayed for issue of a mandamus to the respondents to reinstate him with consequential benefits.

The petitioner was appointed as Staff Officer Grade 'A' in the

services of Small Industries Development Bank of India (for short, 'the bank') vide letter dated 30-10-1995 issued by the Deputy Manager (Personnel). As per the conditions of appointment, his probation was two years. The petitioner joined the service on 4-12-1995. Immediately thereafter, he proceeded on leave on the ground of sickness and loss of mental balance. After 23 days, he reported for duty and produced fitness certificate dated 21-12-1995 issued by the bank's Medical Officer. After two weeks of rejoining, the petitioner exhibited abnormal behaviour, which showed symptoms of mental sickness. The officers of Bhubaneswar Branch of the bank contacted the parents of the petitioner. During the course of discussion with his parents, it was revealed that the petitioner had suppressed the factum of his past sickness. On 19-1-1996, the petitioner submitted letter of resignation, but on the request of his parents, the same was allowed to be withdrawn. After about a month and half, the General Manager of the bank issued the impugned order terminating the petitioner's services. The representation made by him for re-consideration of the matter was rejected by the bank vide letter dated 13-6-1996.

The petitioner has questioned the termination of his service mainly on the ground of violation of the rules of natural justice. He has averred that due to adverse climatic conditions, he fell sick at Bhubaneswar necessitating taking of leave and that without giving him notice and opportunity of hearing, the management of the bank arbitrarily terminated his service. He has further averred that the impugned order is liable to be quashed on the ground of violation of the conditions of appointment and total non-application of mind by the authority concerned.

In the counter affidavit filed by him, Sri Ch.S.R. Sarma, General Manager of the bank has given the details of the sickness of the

petitioner and justified the action taken by the bank by making the following averments:

“4. The petitioner was appointed in the bank w.e.f. 4-12-1995. He proceeded on leave as he fell ill due to home sickness and loss of mental balance. In the circumstances, we had advised Bhubaneswar Branch Office to keep a close watch on his actions and behaviour. Bhubaneswar Branch Office has informed that the petitioner reported for duty on 27-12-1995 on production of fitness certificate dt.21-12-1995 issued by the Bank's Medical Officer, Hyderabad. It appears that the petitioner had mental set back even before he underwent pre-recruitment medical examination at Hyderabad and he seems to have suppressed this material fact. About 2 weeks of his reporting to the branch, the petitioner started behaving in an abnormal manner and showed all the symptoms of mental sickness. His parents were contacted and they immediately rushed to Bhubaneswar to take care of him. During the course of the discussions with them, the matter regarding suppression of the petitioner's past illness was informed. However, they contended that he was undergoing treatment for sleeplessness and mental nervousness and since there was nothing serious about it, the same was not declared at the time of pre-recruitment medical examination. The petitioner had submitted resignation on 19-1-1996. At the request of the petitioner and his parents and also on considering the state of mind of the petitioner, the resignation letter was given back to the parents of the petitioner. In view of that, the resignation submitted by the petitioner was permitted to be withdrawn. In view of the critical health condition of the petitioner and also the state of mind i.e., mental illness, it was found that his continuance in the office of the bank is detrimental to the interest of bank and as such in terms of staff rules, his service was terminated when he was still in probation and probation was not completed and even during the period of probation as his work was not satisfactory. Further, the behaviour of the petitioner in office caused hindrance to the working atmosphere and hampered the working of other staff in the office. Hence, there

was no alternative left to the bank to terminate his probation as it will be detrimental to the interest of the bank to continue the petitioner.”

I have heard learned counsel for the parties. In my opinion, the writ petition is liable to be dismissed because,

i) The petitioner has not impleaded the employer i.e. the bank as a party to the writ petition and without giving notice and opportunity of hearing to the employer, the termination of his service cannot be invalidated. In this connection, reference can appropriately be made to the judgment of the Supreme Court in **Ranjeet Mal v. General Manager, Northern Railway**<sup>[1]</sup>. That involved adjudication of the appellant’s challenge to the order of his removal from service. One of the objections raised by the respondents to the maintainability of the writ petition, which found favour with the High Court, was that the Union of India had not been impleaded as a party. While approving the judgment of the High Court, the Supreme Court held:

“It cannot be disputed that the appellant was a servant of the Union. It is equally indisputable that any order of removal is removal from service of the Union. The appellant challenged that order, Any order which can be passed by any Court would have to be enforced against the Union. The General Manager or any other authority acting in the Railway Administration is as much a servant of the Union as the appellant was in the present case.....The Union of India represents the Railway Administration. The Union carries administration through different servants. These servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. therefore, from all points of view, the Union of India was rightly held by the High Court to be a

necessary party. The petition was rightly rejected by the High Court.”

ii) The petitioner’s service was terminated during probation because he had suppressed the factum of his mental sickness. In paragraph 4 of the counter affidavit, Sri Ch.S.R. Sarma has given vivid picture of the state of mind of the petitioner. The latter has not filed rejoinder to controvert the same. Therefore, the action taken by the management of the bank to dispense with the services of the petitioner cannot be termed as arbitrary or unjustified.

For the reasons stated above, the writ petition is dismissed.

**G.S.SINGHVI, C.J.**

28<sup>th</sup> March, 2007

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[\[1\]](#) AIR 1977 SC 1701